CF0000063334

Cr.A. 723/01

(2)

XII-185(Jail)C.J.P.R./9-94

APPEAL OF PRISONER

No..ST.No.174/2000.. Name- चितूराम

Father's Name- धानीराम

Residence मुण्डनेकेला पो. केलंगा जि. रायगढ़ age- 30 years

Sentenced to- आजीवन कारावास on- 01-07-2001

under Section- 302 भा. द.वि. by द्वितीय अपर सत्र न्यायाधीश रायगढ़ (छत्तीसगढ़)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the prisoner states that he does not wish to be representated by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1. Date of Application for copy of Judgement संलग्न निर्णय प्रतिलिपि।
2. Date on which copy received- 9-7-2001
3. Date on which Appeal sent- 13-8-2001
4. Whether the prisoner wishes to be represented or not- Y

No- ST.No- 174/2000 -Name- चितूराम पो० धानीराम

confined in - केन्द्रीय - -Jail- बिलासपुर (छ.ग.)

No- 272 Dated- 13/8/2001

Forwarded to the- श्री मान रजि०अधि०मो०उच्च०आ० छत्तीसगढ़ बिलासपुर।

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent
Jail

Date of receipt in- -Office-

Date of receipt of record to accompany the-

Memo of Appeal to the Appellate Court-

No- Date.....

Forwarded to the:

Date of receipt in Appellate court-

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CRA NO.723 **सन्** **200** |

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH

HON'BLE MR. L.C. BHADOO &

HON'BLE MR. DHIRENDRA MISHRA, JJ.

14-11-2006

Shri Abhay Tiwari, counsel for the appellant.

Shri D.K. Gwalre, Deputy Govt. Advocate for the State/ respondent.

Today this matter has been listed for hearing on bail application M.(Cr.)P. No.2221/2006, as the accused is in custody since 2000, therefore, at the request of learned counsel for both the parties, this appeal is being disposed of finally.

Oral judgment dictated on *Dais*.

PER L.C. BHADOO, J.

This appeal is directed against the judgment of conviction and order of sentence dated 31st July 2001 passed by the 3rd Additional Sessions Judge, Raigarh, in S.T. No.174/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing murder of his wife namely, Laganmati, sentenced him to undergo imprisonment for life.

Case of the prosecution, in brief, is that on the fateful day the accused and the deceased returned to their house after finishing their work, the deceased locked the house from inside, when the accused

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demanded key of the lock, the deceased refused to give the same, on which the accused picked up an iron road and assaulted once on her head, as a result of which she became unconscious and succumbed to the injuries. On hearing the sound, people collected in front of the house of the accused in which village Patal and Up-Sarpanch also reached, they saw that deceased Laganmati was lying in unconscious condition, there was injury on the head and blood was oozing out of the injury. On enquiry, the accused made confession before the witnesses that he has assaulted his wife with an iron rod. The matter was reported by PW-3 Nanhilal in the Police Station Lailunga on which F.I.R. Ex.-P/2 was registered.

After usual investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Gharghoda, who in turn committed the case to the Sessions Judge, Raigarh, from where learned 3rd Additional Sessions Judge received the case on transfer.

The prosecution in order to establish the charge against the accused examined 11 witnesses. Statement of the accused was recorded in which he denied his involvement and stated that he has been falsely implicated in the crime. However, learned Additional Sessions Judge after hearing counsel for the respective parties and also perusal of the record convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

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At the outset, Shri Tiwari submitted that he is not disputing the homicidal death of Laganmati. Apart from that, from the medical evidence of Dr. Shailendra Upadhayay (PW-10) as also the evidence of witnesses namely, PW-2 Kriparam, PW-4 Umashankar, PW-5 Bhajansai, and PW-6 Mahettar before whom the accused made extra judicial confession that he has assaulted his wife with an iron rod, it is established that the death of the deceased was homicidal in nature.

As far as involvement of the accused in the crime in question is concerned, witnesses PW-2 Kriparam, PW-3 Nanhilal, PW-4 Umashankar, PW-5 Bhajansai, PW-6 Mahettar and PW-7 Visheshar have categorically stated that on enquiry the accused disclosed that he has assaulted his wife with an iron rod. All these witnesses are independent witnesses and there is nothing on record which shows that the extra judicial confession made by the accused before these witnesses was not voluntary. Even the weapon of offence was also lying on the place of occurrence, therefore, the accused made extra judicial confession before these witnesses which was voluntary and true, therefore, involvement of the accused is established and to this extent, finding of the trial Court does not suffer from any illegality or infirmity.

Learned counsel for the accused/appellant argued that as the deceased refused to give key of the lock to the accused, which annoyed the accused and he, all of a sudden, picked up an iron rod and attacked once only. There was no intention of the accused to cause

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death of his wife, as such, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C..

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

There is ocular evidence in this case and as has been mentioned earlier, the accused made extra judicial confession before the witnesses namely PW-2 Kriparam, PW-3 Nanhilal, PW-4 Umashankar, PW-5 Bhajansai, PW-6 Mahettar and PW-7 Visheshar and as per the medical evidence there was only one injury on the Occipital region and Occipital bone was found fractured. There is nothing on record to indicate that the accused attacked the deceased with intention to cause her death. As the accused and the deceased returned just before the incident after finishing their work, the deceased locked the house, when the accused demanded key, the deceased refused to give the same, on which the accused, all of a sudden, picked up an iron rod and attacked only once on her head. Therefore, from the above fact, it is clear that the accused did not attack the deceased with intention to cause her death. Hence, offence under Section 302 of the I.P.C. is not made out. However, from the facts and circumstances of the case, it can safely be inferred that the manner in which the accused assaulted the deceased with iron rod, the accused had knowledge that by attacking with iron rod on head, he may likely to cause death, thereby offence punishable under Section 304 Part-II of the I.P.C. is made out against the accused.

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Barve	In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 7 years. As the accused is said to have been in custody since 12-7-2000, the accused shall be entitled for set off for the above period against the sentence imposed upon him. In view of the above, M.(Cr.) P. No.2221/2006 stands disposed of. **Sd/-** **L.C. Bhadoo** **Judge**	Sd/- DHIRENDRA MISHRA Judge

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